

Authorised Application Managers Regulations

Policy Document
Malta Gaming Authority



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Introduction

The introduction of the role of the Application Manager serves to ensure improved efficiency and expediency of the Authority's authorisations process. The regulation and supervision of Application Managers shall also enable the Authority to monitor and control the quality and accuracy of the documentation and information it receives, thereby ensuring that applicants are provided with a good level of service across the board by service providers. Additionally, Application Managers will assist Authorised Persons and prospective Authorised Persons in their interaction with the Authority, ultimately guaranteeing a smoother authorisations process for all parties involved. This notwithstanding, Authorised Persons or prospective Authorised Persons shall be free to choose whether to engage an Application Manager or whether to apply directly with the Authority, thus providing a degree of flexibility to the Authorised Person to adapt depending on its operations and inhouse expertise, if applicable.

The Regulations delineate the obligations and functions of the Application Manager and establish the remit and powers of the Authority in their regard. This Policy Document shall provide further clarity with regards to the Authority's expectations of the Application Manager and seeks to provide guidance to aid an Application Manager in its role.

Scope

The Policy Document is divided into four (4) parts. Part I tackles the role and authorisation process of an Application Manager; the eligibility criteria that must be fulfilled by applicants; and the fitness and propriety checks to which applicants shall be subjected.

Part II delineates the process of engagement of an Application Manager by a client. Part III expands on specific obligations of the Application Manager and the policies, procedures and systems that an Application Manager must have in place.

Finally, Part IV tackles the compliance and enforcement implications of the authorisation and delineates the manner in which an Application Manager's authorisation may be surrendered.

A flowchart illustrating the authorisation process for Application Managers is included in Annex 1.

Definitions

In this Policy Document all words and phrases shall have the same meaning as prescribed in the Gaming Definition Regulations (S.L.583.04) and the Authorised Application Manager Regulations (S.L.583.13).

Part I – Authorisations Process

1 Requirement of Authorisation to act as an Application Manager

In accordance with Part V of the Regulations, the Application Manager is expected to carry out the following functions:

- (a) Act as a liaison between the client and the Authority on matters arising in connection with an application for any authorisation in relation to which they are allocated competence by the client;
- (b) Guide their client in relation to the responsibilities and obligations of the client in connection with the authorisation that it is seeking to obtain from the Authority; and
- (c) Receive and provide to the Authority, all relevant documentation and information that is required in order for their client to obtain the relevant authorisation.

It is imperative that a distinction is made between a consultancy role and the role of an Application Manager. The Application Manager shall be deemed to be acting as the latter when the client engages the Application Manager to carry out any of the above-mentioned functions in relation to an active application. In the instance that a person is providing consultancy, advice and/or guidance in relation to the licensing process and/or the applicable regulatory framework (in absence of an active application) such person shall not be deemed to be carrying out the role of Application Manager. On the other hand, if a person is engaged to provide advice and/or is allocated competency to act on behalf of a client in relation to any matter relating to an active application, the relevant provisions of the Regulations and any other applicable binding instrument must be adhered to.

1.1 Eligibility criteria

Both natural and legal persons are eligible to apply for the authorisation of an Application Manager. An authorisation of a natural person as an Application Manager will be issued in the name of such individual. In the case of a legal person applying for the authorisation of Application Manager, the authorisation will be issued in the name of the legal person. In such cases, the authorisation shall also indicate the respective appointed Designated Persons. It should be noted that a legal person applying for the authorisation of an Application Manager shall, at a minimum, notify two (2) Designated Persons in accordance with regulation 9 of the Regulations. In any case, Application Managers cannot appoint more than ten (10) Designated Persons at any point in time.

2 Fitness and Propriety Checks

As a first step in establishing the eligibility of an applicant, such applicant must submit information to enable the Authority to determine the applicant's fitness and propriety, in line with the considerations and requirements established by the Fit and Proper Guidelines issued by the Authority.

2.1 Scope and Applicability

In accordance with the Fit and Proper Guidelines issued by the Authority, the elements considered in ascertaining fitness and propriety are:

- a. Honesty, integrity and reputation;
- b. Competence and capability; and
- c. The sound financial standing of the applicant.

3 Suitable Expertise Requirement

Regulation 7 identifies suitable expertise as an eligibility requirement to act as an Application Manager. Furthermore, the Authority reserves the right, by virtue of the proviso to regulation 7, to assess the applicant's eligibility and expertise in a manner deemed fit by the Authority.

3.1 Form of Assessment

In the event that the Authority is not satisfied with the eligibility and expertise of an Application Manager, the Authority reserves the right on the basis of a risk-based approach to subject an Application Manager and/or a Designated Person to undergo an assessment that shall take the form of a structured interview. The applicant in question must pass this assessment to be considered to have fulfilled the suitable expertise requirement identified in regulation 7. The Authority may, if it deems this necessary and conducive towards ascertaining the expertise of the applicant, carry out another form of assessment, including but not limited to, subject the applicant to a written examination in addition to or in lieu of the structured interview.

During the interview, the applicants shall be tested and assessed in relation to the following:

- a. **The Authorisation Processes of the Authority (50 Marks)** – The Authority may ask questions relating to the Licensee Relationship Management System (LRMS) and the documentation that needs to be submitted with respect to the different types of applications.
The Authority may also present the applicant with case studies in order for them to determine which licence category may be applicable to a particular operation and also, how to deal with specific situations that may arise during the authorisation process, e.g. the provision of incomplete and/or incoherent information by a client.
- b. **The Regulatory Obligations of Authorised Persons (50 Marks)** – The Authority shall assess the level of knowledge of the applicant by asking questions relating to specific obligations of

Authorised Persons, including but not limited to, notification requirements, player protection, advertising, outsourcing, and the use of virtual financial assets by Authorised Persons.

The applicant shall be deemed to have passed the assessment upon attaining forty-five (45) marks. In the event of a failing result, the Authority will issue a letter of refusal to the applicant, citing the failing result as one (1) of or the sole grounds for refusal, as applicable.

A passing result (i.e. attaining forty-five (45) marks or over) shall be valid for a period of five (5) years. In consideration of the fact that the legal and administrative frameworks of the Authority change on an ongoing basis, the continued fulfilment of the expertise requirements shall require the Application Manager (natural person) or Designated Person to undergo an updated assessment after the lapse of five (5) years. The Authority reserves the right to subject the Application Manager (natural person) or Designated Person to a different form of assessment during the renewal process.

4 Practical Considerations

4.1 Letter of Refusal

In such case that the Authority deems that the authorisation of Application Manager should not be issued in terms of the Regulations, the Authority shall give reasons for such refusal by means of a letter issued to the applicant.

In the event that an applicant receives a letter of refusal, the applicant shall be barred from reapplying for the authorisation to carry out the role of an Application Manager, for a period of no less than six (6) months from the date of the letter of refusal.

This section shall also apply to individuals proposed to be Designated Persons.

4.2 Designated Persons of the Application Manager (Legal Person)

By virtue of regulation 9, any legal person authorised to act as an Application Manager is required to appoint, at least two (2) but not more than ten (10) Designated Persons, who shall perform the functions on behalf of an Application Manager. Further to the performance of their functions, Designated Persons may be required to submit applications to the Authority on behalf of their clients. In this regard, the respective Designated Person shall be linked to the specific application, making such Designated Person the main point of contact for the purposes of any matter arising in relation to such application.

Designated Persons shall at all times be performing such functions and obligations in the name of the legal person holding the Application Manager authorisation. It follows that the ultimate responsibility to fulfil an Application Manager's functions and obligations is vested with the legal person authorised to be an Application Manager. Without prejudice to the foregoing and in terms of section 13 of this Policy Document, the Authority may issue enforcement measures vis-à-vis the legal person holding the Application Manager authorisation. Further to this, the Authority reserves the right to, inter alia, issue orders, give directions and/or take actions as a result of the conduct of the Designated Person/s. Such

orders, directions and/or actions may entail the revocation of any approval issued to the Application Manager relating to the appointment of any such Designated Person/s.

4.3 Outsourcing and Enlisting of Assistance

Any natural or legal person authorised to act as an Application Manager shall be prohibited from outsourcing or allowing third-parties to perform on its behalf, the functions and obligations of an Application Manager stipulated in Part V and VI of the Regulations.

Without prejudice to the foregoing, the Authority is also mindful of the fact that an Application Manager may have additional personnel/employees assisting the Designated Person/s or the Application Manager (natural person) in the performance of their relevant functions and obligations. For the avoidance of doubt, this shall be allowed since the Application Manager shall retain ownership and ultimate responsibility for the relevant application. Moreover, the Application Manager (or in the case of legal person, the Designated Person/s) shall remain the main point of contact of the Authority vis-à-vis the relevant application.

4.4 Employees of Eligible Legal Persons

The Regulations shall not be read or construed in a manner which precludes an employee of an eligible legal person to obtain an authorisation to act as an Application Manager in their own right as a natural person. Given that in such a scenario the authorised Application Manager shall be the employee of the legal entity, such employee should be mindful of the fact that this arrangement should be properly documented in their conflicts of interest policy. For the avoidance of doubt, this shall be applicable if the relevant legal person (i.e. the employer) may be considered to obtain the authorisation to act as an Application Manager itself in terms of regulation 8.

Nevertheless, it should be noted that in the event that an eligible legal person obtains an authorisation to act as an Application Manager, the Regulations shall not be read or construed in a manner which allows the employees of such legal person (i.e. the employer) to obtain the authorisation to act as an Application Manager (natural person) in their own right, as this would conflict with the effective exercise of their functions in terms of the Regulations and this Policy Document.

4.5 Designated Persons changing Employment

In the case that a Designated Person leaves the entity that holds the Application Manager authorisation, this must be notified to the Authority in accordance with regulation 24(1)(b) of the Regulations. The Application Manager shall have fifteen (15) working days to propose a new

Designated Person to the Authority in order to ensure that at least two (2) but not more than ten (10) Designated Persons are appointed at all times. The Authority may extend the fifteen (15) working days timeframe, in the case that the Application Manager notifies the Authority of reasonable and justified reasons, which preclude it from adhering to the designated timeframe. The proposed Designated Person shall be subjected to the checks and assessments delineated in sections 2 and 3 above.

4.5.1 A Designated Person resigns from an authorised Application Manager (Legal Person)

In the case that the Designated Person leaves an entity that holds the Application Manager authorisation and takes up employment with another entity that holds the authorisation of an Application Manager, such person may be appointed as Designated Person of the new entity, subject to the adherence of any regulatory requirements.

In the instance that a Designated Person leaves the entity that holds the Application Manager authorisation and wishes to carry out the role of an Application Manager in their capacity as a natural person, a new authorisation process must be initiated with the Authority. However, in the event that the Authority already holds the relevant information in relation to the natural person that wishes to act as an Application Manager, wherein the relevant fitness and propriety checks have been conducted and the relevant eligibility criteria have been fulfilled, assuming that the information submitted remains valid in terms of the following paragraphs, then such information need not be resubmitted to the Authority. Notwithstanding this and for the avoidance of doubt, in such a case, the policies that an Application Manager is obliged to have in place in terms of the Regulations and section 9 below, must be submitted to the Authority anew, in view of the fact that such previous policies would have been submitted by the entity that holds the Application Manager authorisation.

In each case, if following the Designated Person's departure from their previous employment, the Designated Person fails to exercise their role for a period exceeding one (1) year, the Authority may subject such person to the relevant fitness and propriety checks, if it deems it necessary and conducive towards ascertaining that such person is still fit and proper to carry out their role. Notwithstanding this, the Authority shall reserve the right to subject such person to the relevant fitness and propriety checks prior to the lapse of the aforementioned one (1) year period. In this respect, it should be noted that the Designated Persons' previous compliance track record would not start afresh when such Designated Person has moved from one entity to another.

Furthermore, if the five (5) year period from when the Designated Person has obtained a passing result in terms of section 3.1 of this Policy Document have not yet elapsed, such Designated Person shall not be required to undergo such expertise assessment before the lapse of the five (5) year period mentioned above.

4.6 Persons already acting as a Director or a Key Function

The Regulation does not preclude a person from applying to be authorised to act as an Application Manager if such person holds the position of director and/or key person of an Authorised Person. This notwithstanding, such a scenario must be addressed accordingly in the Application Manager's conflict of interest policy to ensure that there are adequate safeguards in place to minimise any conflict of interest from arising, and to set out the manner in which a conflict should be dealt with in the case that it arises.

5 Fees

5.1 Application Manager (Legal Person)

The one-time, non-refundable authorisation application fee for the Application Manager (Legal Person) shall be one thousand two hundred euros (€1,200). This shall be considered as an administrative fee payable in terms of regulation 5(3) of the Gaming Licence Fee Regulations (S.L.583.03).

5.2 Application Manager (Natural Person)

The one-time, non-refundable authorisation application fee for the Application Manger (Natural Person) shall be two hundred and fifty euros (€250). This shall be considered as an administrative fee payable in terms of regulation 5 (3) of the Gaming Licence Fee Regulations (S.L.583.03).

Part II – Process of Engagement of an Application Manager

6 Engagement of an Application Manager

Regulation 3 establishes that the engagement of an Application Manager is voluntary and thus a person that wishes to apply for an authorisation from the Authority has the choice of applying directly with the Authority or engaging an Application Manager to this end.

For the avoidance of doubt the Regulations do not preclude Application Managers from being engaged to carry out their functions, in terms of Part V of the Regulations, in relation to authorisations or applications that fall outside the scope of the First Schedule of the Regulations; the First Schedule delineates the authorisations that trigger the client vetting function of the Application Manager in the case that it has been engaged to apply for any such authorisation.

It should further be noted that the Regulations do not preclude the engagement of multiple Application Managers by the same Authorised Person or client, in so far, as such engagement relates to different applications. This, in light of the fact that multiple Application Managers cannot be performing their functions in relation to the same application. Therefore, a single Application Manager or Designated Person, where applicable, must be identified and solely linked to a respective application.

For the purposes of such engagement, it is also worth noting that a client may either elect to link a specific application to such Application Manager or they may opt to provide the Application Manager with access to their respective company timeline on the LRMS, thereby authorising them to have access to all previous and future applications.

Part III – Functions and Obligations of an Application Manager

7 Functions of an Application Manager

7.1 Client Vetting Function

Regulation 14 establishes the client vetting function of the Application Manager. This function shall be triggered in the instance that an Application Manager is engaged to handle an application for any authorisation listed in the First Schedule of the Regulations, for which an Entity Declaration Form is required to be submitted.

In the event that an Application Manager is engaged to handle an application for an authorisation listed in the First Schedule of the Regulations, which requires the submission of a Personal Declaration Form, the Application Manager's client vetting function shall only be triggered in the instances delineated in Section 7.2 of this Policy Document.

7.1.1 Fitness and Propriety

When identifying the issues and/or concerns in relation to its client's fitness and propriety, an Application Manager shall, at a minimum, consider whether the client, including any qualifying holder and director of the client has:

- a. Ever been investigated for, prosecuted for and, or convicted of an offence;
- b. Ever been adjudged bankrupt;
- c. Ever been the subject of an investigation by a government, professional or other regulatory body;
- d. Ever been a director, shareholder, officer or manager of a business entity which has been the subject of an investigation as aforesaid;
- e. Ever been a director, shareholder, or manager of a business entity which has been adjudged bankrupt, wound up or has made any compromise or arrangement where its creditors did not receive or have not yet received full settlement of their claims;
- f. Ceased in trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims; and
- g. Ever been dismissed or made to resign from previous employment.

If any of the above are disclosed by the client, the Application Manager shall assess the impact that such issues and/or concerns have on the fitness and propriety of the client and where considered necessary, the Application Manager should request further clarification and/or documentation in this regard.

7.1.2 Source of Funds and Source of Wealth

Regulation 14(5) further imposes a requirement on the Application Manager to identify the issues and/or concerns relating to the client's accumulation of wealth and source of funds for the purposes of the following applications:

- a. An authorisation to offer any gaming service and, or critical gaming supply;
- b. Any change in direct or indirect qualifying interest within the Authorised Person; and
- c. The taking of any loan by the Authorised Person, where such loan is not from a credit institution licensed in the EU or the EEA.

In the case that the above issues and/or concerns are identified in relation to a change in direct or indirect qualifying interest, such issues and/or concerns pertaining to the legal accumulation of wealth and the legitimacy of source of funds shall only be identified in relation to any direct or indirect qualifying holder that was not part of the corporate structure of the Authorised Person that had been previously approved by the Authority.

The Application Manager shall make use of their expertise to assess whether any issues and/or concerns should be identified and accordingly disclosed to the Authority from the information and documentation provided by their client.

7.1.2.1 Funding by Natural Persons

In order to be able to identify any issues and/or concerns in this respect, the Application Manager must obtain:

- a. A detailed declaration of source of funds; and
- b. A statement of affairs of the client.

The declaration of source of funds should be evidenced with the appropriate supporting documentation, which should be submitted as certified true copies. The following non-exhaustive list illustrates some examples of documents that may be submitted to verify the information provided:

Evidence	Reason for submission
Tax return	To have visibility of all income sources.
Contract of Sale	To verify that the source of funds stems from the sale of assets.
Share Certificate	To confirm ownership of an entity.
Dividend warrant and financial statements	This would be submitted to confirm the entity that is paying out such dividends.
Wills, Contracts and Bank Statements	These would evidence that the funds have been received.
Loan Agreement	To verify that the funding is provided by way of a loan.

If the Application Manager is for some reason or other unable to obtain the above documentation from their client, then the Application Manager should inform the Authority accordingly.

7.1.2.2 Funding by Legal Persons

In order to be able to identify any issues and/or concerns in this respect, the Application Manager must obtain:

- a. A detailed declaration of the source of funds; and
- b. The funding company's audited financial statements and/or evidence to support the source of funds being invested in the Authorised Person.

The source of funds declaration should include any funds which were invested as share capital, by means of third-party financing, and/or by way of sale or transfer of assets. Further to this, any supporting documentation that corroborates, substantiates and/or supports the information provided by means of the declaration should also be collected by the Application Manager and provided to the Authority as a certified true copy, including but not limited to:

- a. Financial statements of the funding company;
- b. Dividend warrants; and
- c. Share certificates.

If the Application Manager is for some reason or other unable to obtain the above documentation from their client, then the Application Manager should inform the Authority accordingly.

7.1.2.3 Provision of a Loan to an Authorised Person

In order to identify any issues and/or concerns in this respect, the Application Manager must determine the source of the loan, which can include, *inter alia*,

- a. A loan from a credit institution not licensed in the EU or EEA;
- b. A loan from a party related to the Authorised Person;
- c. Any loan from a third party; and
- d. Any other type of payable.

In the event that the loan in question falls within the scope of point (a) and also exceeds the abovementioned threshold, the Application Manager must obtain:

- i. Information in relation to the reputation of the applicable credit institution and jurisdiction;
- ii. Information in relation to the purpose of the loan; and
- iii. The Loan Agreement.

If the loan in question falls within the scope of points (b), (c) and (d) and also exceeds the abovementioned threshold, the Application Manager must obtain the documentation specified in Section 7.1.2.1 and/or Section 7.1.2.2 accordingly. The Application Manager should also carry out any fitness and propriety checks specified in Section 7.1.1 on the individual and/or entity that shall be providing such funding.

If the Application Manager is for some reason or other unable to obtain the necessary documentation and/or information from their client, then the Application Manager should inform the Authority accordingly.

7.2 Practical Considerations of the Client Vetting Function

Further to the foregoing sections, the Application Manager is required to submit (on behalf of their clients) the Entity Declaration Form through the Authority's LRMS, together with any supporting documentation as necessitated by such forms.

In the event that an Application Manager is engaged for the purposes of an application which requires a Personal Declaration Form to be submitted, the Authority maintains that in furtherance of the principles of data accuracy and data minimisation, any individual shall submit a singular corresponding Personal Declaration Form, to ensure the information is not duplicated and/or rendered inaccurate.

This notwithstanding, an Application Manager may be engaged to review their client's Personal Declaration Form prior to its submission to the Authority. Furthermore, an Application Manager may also be engaged to submit such Personal Declaration Form in its entirety on behalf of its respective client. Nevertheless, the relevant Authorised Person or prospective Authorised Person shall reserve the right to determine the involvement of an Application Manager in this regard. In such case that the Application Manager is engaged to review or submit an individual's Personal Declaration Form, the Application Manager's client vetting function would be triggered, in terms of regulation 14.

8 Obligations of an Application Manager

8.1 Assessment of Authorisation

Regulation 15 establishes the Application Manager's obligation to assess their client's operation, in terms of the criteria established hereunder, if they are assisting a client in submitting an application for an authorisation to offer any gaming service and, or critical gaming supply. The conclusions of such assessment should subsequently be submitted to the Authority for its review accordingly. It should be noted that by means of this assessment, the Application Manager should clearly identify the following, inter alia:

- a. Whether the proposed operation of their client falls within the scope of a licensable service in accordance with the applicable regulatory framework;
- b. The specific licence category in which such proposed operation shall fall within (i.e. a either
- c. B2C or a B2B Licence);
- d. The specific game type such proposed operation shall be offering;
- e. The reasoning adopted in order to reach the conclusions in relation to the above points, as well as any necessary supporting documentation.

The Authority shall retain ultimate discretion with respect to any determination or confirmation which is made in relation to a client's proposed operation.

8.2 Fiduciary Obligations

By virtue of regulation 16, Application Managers are considered fiduciaries when exercising their role and must therefore ensure that they act honestly, fairly and professionally. Additionally, in the case where the interests of the client and those of the Authority diverge, as established by the Regulations, the Application Manager must be guided by the principles applicable to fiduciaries in accordance with article 1124A of the Maltese Civil Code (Chapter 16 of the Laws of Malta).

The Application Managers must strike a balance between the interests of their client and the interests of the Authority and must act independently, ethically and in compliance with their obligations at law.

The role of an Application Manager is to act as liaison between the Authority and their client to ensure that the Authority receives complete and accurate information which will allow it to process the relevant application, while also ensuring that the client is provided with a good service with the aim of minimising delays and obstacles during the authorisation process. Additionally, Application Managers are responsible for assisting their clients throughout the application process, therefore Application Managers must duly inform their clients of their obligations at law and provide them with clear instructions regarding the information and documentation that must be provided to the Authority.

8.3 Record-keeping Obligations

In accordance with regulation 17(f), the Application Manager is required to maintain sufficient records to be able to demonstrate compliance with its obligations. In line with the Regulations, such records must include, inter alia, a record of the services carried out by or on behalf of the Application Manager for its clients.

Application Managers shall also be expected to keep records of:

- a. Any reasoning and decisions leading to the determination of the licence type that a client should apply for, especially in cases of complex set-ups or operations where the licence category may not be easily discernible;
- b. Any conflict of interest that arises, in line with the Application Manager's conflict of interest policy, in accordance with section 9.1; and
- c. Any reasoning and decisions taken by the Application Manager in relation to its client vetting function, in accordance with section 7.1.

Adequate record-keeping will facilitate the communication between the Authority and the Application Manager if an issue crops up during the authorisations process or if clarification in any regard is required by the Authority. Furthermore, such records will facilitate any potential ad-hoc compliance checks which the Authority may undertake, in accordance with section 12.1 of this Policy Document.

The Application Manager must ensure that any personal data is collected and processed in a manner which is compliant with its obligations under the General Data Protection Regulation (EU 2016/679) and any relevant data protection legislation or guidance issued by the relevant authorities.

8.3.1 Record-keeping during the Client Vetting Process

For the avoidance of doubt, in relation to point (c) of section 8.3 above, in order to comply with their obligations, Application Managers must, at a minimum, keep record of the reasoning underpinning:

- a. Whether or not a client was asked for further information or documentation during the client vetting process; or
- b. The refusal to onboard a client due to information that surfaced during the client vetting process.

Further to point (b) above, it must be noted that the Application Manager is also obliged to disclose information to the Authority in terms of regulations 14(1) and 14(5), to ensure that the Authority is aware of such persons and any issues and/or concerns that should be highlighted to the Authority.

8.4 Collection of Information

Notwithstanding what is established in this Policy Document and the Regulations, the Application Manager may, in the performance of its functions, require further information in order to be able to highlight and inform the Authority of concerns and/or issues relating to the fitness and propriety of their client. Therefore, if the Application Manager deems the provision of further information by their client to be necessary, it shall be in line with its duty to submit complete and correct information to request such information and provide it to the Authority. In the event that an Application Manager or a Designated Person is habitually submitting incomplete and inaccurate information, the Authority shall reserve the right to, where applicable, issue an enforcement measure in accordance with section 12 of this Policy Document, as well as their compliance track record.

Ultimate discretion shall lie with the Authority to request any further information, over and above that which has already been submitted by the Application Manager and which the Authority may deem necessary for determining whether a person is fit and proper.

9 Implementation and Maintenance of Effective Policies

9.1 Conflict of Interest Policy

An Application Manager must have in place an effective conflict of interest policy to ensure that its personal or business interests do not conflict with the effective exercise of its functions in terms of the Regulations, or any relevant legislation or binding instrument issued thereunder.

The conflict of interest policy must address the manner in which possible conflicts will be handled, and identify measures that must be put in place to mitigate potential risks or damage that may arise from such conflicts.

At a minimum, the scenarios that must be considered and catered for in the conflict of interest policy are:

- a. An Application Manager or Designated Person is a key function holder of one (1) Authorised Person and is engaged as an Application Manager for such Authorised Person;

- b. An Application Manager or Designated Person is a key function holder of one (1) Authorised Person and is engaged as an Application Manager by another Authorised Person/client which could create a risk of or a real conflict of interest;
- c. An Application Manager or Designated Person is a director of one (1) Authorised Person and is engaged as an Application Manager for such Authorised Person;
- d. An Application Manager or Designated Person is a director of one (1) Authorised Person and is engaged as an Application Manager by another Authorised Person/client which could create a risk of or a real conflict of interest;
- e. An Application Manager's general conflict that may arise due to engagement by multiple clients;
- f. Any case where there is a conflict between the interests of the Application Manager or certain persons connected to the Application Manager or the group of which the Application Manager forms part or from the performance of its functions, and the duty that the Application
- g. Manager owes to its client; and
- h. Any conflict between the interests of the Application Manager and the interests or requirements of the Authority.

The conflict of interest policy must identify the actual and potential conflicts that may arise or do arise in the course of an Application Manager's duties and must set out mitigating measures and a procedure to be followed in the case that any potential conflict is realised. In addition to this and on the basis of regulations 20(7), such procedure must, at the minimum, cater for the manner in which the Authority will be notified of any conflicts that have arisen, which entails the risk of damage to the interests of one (1) or more of the Application Manager's clients.

Due consideration must be given to the fact that an Application Manager or Designated Person is likely to be in possession of an Authorised Person or client's sensitive commercial information, which can pose a risk to the integrity and independence of an Application Manager when engaged by another Authorised Person or client. In view of this, it is vital that when drafting the conflict of interest policy, the Application Manager gives due consideration to any information, including sensitive data relating to a client's business, that an Application Manager or Designated Person is expected to be privy to.

The nature of the service provided is not static and the clients which the Application Manager will service and the scenarios it will face will be inherently ever changing. Therefore, to ensure the policy's effectiveness, the Application Manager must review and, if necessary, revise the policy, at a minimum, on an annual basis. It must be noted that in accordance with Regulation 24(1)(g), any material changes to the conflict of interest policy must be notified to the Authority within three (3) working days of such change being implemented.

9.2 Client Vetting Policy

An Application Manager is required to establish and submit a client vetting policy to the Authority. In accordance with regulation 18, the Application Manager's client vetting policy should include inter alia:

- a. The identification of due diligence systems, controls and procedures to be used by the Application Manager to guide it in assessing the fitness and propriety of its clients in terms of regulation 14; and
- b. The identification of documentation that will be accepted by the Application Manager to verify the information submitted by the client and the standard of data that will be accepted for such purposes.

The procedures established by means of the client vetting policy shall relate to the authorisations listed in the First Schedule of the Regulations.

9.3 Information Security Policy

An Application Manager is required to establish, implement and maintain an effective Information Security Policy in accordance with regulation 21(1) of the Regulations. The Application Manager should ensure that effective systems and procedures are implemented and maintained in order to adequately safeguard the security, integrity and confidentiality of the information that is being collected by the Application Manager.

The Application Manager's Information Security Policy shall therefore, *inter alia*, include the following:

- a. Information Security Purpose and Objectives (Integrity, Confidentiality and Availability of information);
- b. Data Confidentiality including Data Classification and Access Control Policy (outlining the levels of authority per role over data and systems);
- c. Network Security Policy (Including Access Controls, Segregation and Security of Network Services);
- d. Security awareness and behaviour including acceptable use policy, email/communication use policy and personal and mobile devices policy;
- e. Training, Responsibilities, rights and duties of personnel.

9.4 Business Continuity Policy

Regulation 21(2) requires Application Managers to establish, implement and maintain an effective business continuity policy, in order to ensure that the data that is being stored, is appropriately preserved to ensure a timely recovery in the eventuality that its systems and/or procedures are interrupted. This policy should also establish how the Application Manager's operations will be preserved in such instances.

Therefore, the Application Manager's Business Continuity and Disaster Recovery Policy shall, *inter alia*, include the following:

- a. The 'Business Impact Analysis', specifying any possible system, financial, regulatory compliance and/or legal liabilities and their effects on the operations;
- b. The contingency plans with respect to each identified threat;

- c. An escalation procedure, including contact persons, to be followed on the eventual occurrence of each identified threat;
- d. The routine testing plan with respect to recovery plans;
- e. Details of an alternate site from which to resume temporary operations during a major disruption; and
- f. An adequate contingency plan following the resignation of a Designated Person together with the specified time for a new person to occupy such role.

9.5 Submission of Policies and Procedures to the Authority

Any person applying for the authorisation to act as an Application Manager must submit the policies and procedures referred to in the previous sections to the Authority, as part of the application process.

10 Notification Requirements

Regulation 24 provides the specific instances wherein an Application Manager is required to notify the Authority within the specified timeframes which are established in the Regulations of certain changes which have occurred.

10.1 Engagement of a Client by the Application Manager

Regulation 24(1)(h) imposes a requirement on the Application Manager to notify the Authority once it has been engaged by a client to act as its Application Manager. The notification requirement also obliges the Application Manager to indicate the specific authorisations that it has been authorised by the client to handle. In practice, this requirement shall be fulfilled by the Application Manager automatically once the relevant application form is created on the LRMS by said Application Manager or such Application Manager is linked through LRMS to a particular application accordingly by an Authorised Person.

It shall be considered good practice to formalise the engagement in writing in the form of a letter of engagement concluded between the Application Manager and the client, which delineates the scope and extent of such engagement. Such letter of engagement may be submitted to the Authority when the Application Manager is notifying it of the engagement in accordance with Regulation 24(1)(h). This notwithstanding, the notification requirement established in terms of Regulation 24(1)(h) shall not be dependent on the conclusion of the letter of engagement. The Authority shall be notified within three (3) working days from when the Application Manager has been authorised to perform its functions in terms of Part V of the Regulations by the client.

11 Training Sessions by the Authority

The Authority shall reserve the right to oblige Application Managers to attend any training sessions that the Authority may organise for the purpose of updating Application Managers regarding developments in the authorisations process or the legal framework in general and revising certain topics, as needed. The frequency and detailed objectives behind such training sessions shall be determined by the Authority and communicated to all Application Managers accordingly.

Part IV – Compliance, Enforcement, Surrender

12 Compliance

The Application Manager shall ensure that it is compliant with the relevant obligations at law and shall observe the requirements established in accordance with the Gaming Act (Chapter 583 of the Laws of Malta) and the subsidiary legislation promulgated thereunder.

12.1 Ad hoc Compliance Audit

The Authority reserves the right to subject the Application Manager to a compliance audit on an *ad hoc* basis.

The Authority shall have discretion to determine the frequency and purpose behind such compliance audits, however, such audits may constitute a review of the policies which the Application Manager is obliged to have in place. The audit is aimed at enabling the Authority to ascertain whether such policies are effective and whether they have been properly implemented and maintained.

The compliance audit shall be carried out on the basis of regulation 5 of the Gaming Compliance and Enforcement Regulations (S.L.583.06).

13 Enforcement

In accordance with regulation 27, Application Managers shall be deemed and construed to be an “Authorised Person” for the purposes of the Gaming Compliance and Enforcement Regulations (S.L.583.06). Effectively, this means that for the purposes of compliance and enforcement, Application Managers shall be subject to the provisions of the Gaming Compliance and Enforcement Regulations (S.L.583.06) in its entirety. Furthermore, the Authority shall also follow the Guiding Principles of the Application of Enforcement Measures when issuing any relevant enforcement measures in relation to the Application Manager.

In this respect, one should note that the Authority may issue the enforcement measures in terms of regulation 8 of the Gaming Compliance and Enforcement Regulations against Application Managers, be it a natural or a legal person.

14 Surrender of the Application Manager Authorisation

In accordance with regulation 23(1), an Application Manager may request to voluntarily surrender their authorisation, in accordance with the procedure set out in regulation 28(1) of the Gaming Authorisations Regulations (S.L. 583.05).

14.1 Prior Notification

The Application Manager is required to notify the Authority with its request to surrender the authorisation not later than twenty (20) days from the date that the decision to surrender the authorisation was taken.

14.2 Approval of the Surrender by the Authority

Upon notification, the Authority will instruct the Application Manager to comply with the requirements established below in order to obtain the approval of the Authority further to the surrender of the authorisation. The approval of the surrender of the authorisation by the Authority shall be subject to the adherence of the Application Manager to any instructions given by the Authority which must be fulfilled to the satisfaction of the Authority.

For the Authority to accept the surrender of the Application Manager, the latter would be required to:

- a. Provide a declaratory letter to the Authority confirming that:
 - i. Subject to the Authority's formal approval, the Applications Manager intends to surrender its authorisation;
 - ii. Due notice of its intention to surrender its authorisation has been given to its respective clients;
 - iii. It is no longer providing the services of an Application Manager, in terms of Part V of the Regulations to its clients;
 - iv. No litigation or other claims are pending arising out of any event that occurred during the period in which the Application Manager held its authorisation; and
 - v. The Application Manager has removed any public or internal reference to being authorised by the Authority;
- b. Settle all pending fees that may be due to the Authority; and
- c. Provide such other documentation, declarations or confirmations that the Authority may require.

Annex 1 – Authorisations Process



